

SOMACH SIMMONS & DUNN
A Professional Corporation

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Attorneys for [PROPOSED] Plaintiff-Intervenor
YUHA AVIATAM OF SAN MANUEL NATION,
a federally recognized Indian tribe, also federally
recognized as SAN MANUEL BAND OF MISSION INDIANS

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION – RIVERSIDE

BLUETRITON BRANDS, INC.,

Plaintiff,

v.

UNITED STATES FOREST SERVICE,

RANDY MOORE, in his official
capacity as Chief of the U.S. Forest
Service,

CHRISTOPHER FRENCH, in his
official capacity as Deputy Chief for the
National Forest System of the U.S. Forest
Service,

Case No.: 2:24-cv-09720-JGB-DTB

**DECLARATION OF JOANNE
MICHELLE HICKEY IN
SUPPORT OF YUHA AVIATAM
OF SAN MANUEL NATION'S
MOTION TO INTERVENE AND
MOTION FOR PRELIMINARY
INJUNCTION**

Hearing Date: January 13, 2025
Hearing Time: 9:00 AM
Courtroom: 1
Judge: Hon. Jesus G. Bernal

Action Filed: August 6, 2024

SOMACH SIMMONS & DUNN
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1 JENNIFER EBERLEIN, in her official
2 capacity as Regional Forester for the
3 Pacific Southwest Region of the
4 U.S. Forest Service,
5
6 DANELLE HARRISON, in her official
7 capacity as Forest Supervisor of the San
8 Bernardino National Forest of the
9 U.S. Forest Service,
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11 MICHAEL NOBLES, in his official
12 capacity as Front Country District Ranger
13 of the U.S. Forest Service,
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Defendants.

9 YUHA AVIATAM OF SAN MANUEL
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11 tribe, also federally recognized as SAN
12 MANUEL BAND OF MISSION
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[PROPOSED] Plaintiff-Intervenor.

1 I, JoAnne Michelle Hickey, declare as follows:

2 1. I am a Vice-President, Associate General Counsel for the Yuhaaviatam
3 of San Manuel Nation, a federally recognized Indian tribe, also federally recognized
4 as the San Manuel Band of Mission Indians (the Nation), having served in this
5 position since September 2017. I submit this declaration on the Nation's behalf.
6 The facts set forth herein are based on my personal knowledge, and if called as a
7 witness, I could and would testify competently thereto.

8 2. In my capacity as in-house legal counsel for the Nation, I am
9 responsible for protecting the Nation's interests on many issues, including obtaining
10 approvals from governmental agencies such as the United States Forest Service
11 (USFS), and negotiating agreements with private entities such as BlueTriton Brands,
12 Inc. (BlueTriton).

13 3. I represented the Nation as outside legal counsel in connection with its
14 purchase of the Arrowhead Springs property (Arrowhead Springs) in 2016, and
15 since such purchase, I have advised the Nation regarding its natural and cultural
16 resources, including water rights, uses, and needs at Arrowhead Springs. As such, I
17 am aware the Nation relies on water delivered to Arrowhead Springs for government
18 operations, including wildfire protection, through infrastructure BlueTriton owns
19 and controls in the San Bernadino National Forest (SBNF) (and prior to BlueTriton,
20 infrastructure that Nestlé Waters North America owned).

21 4. Because of the Nation's critical need for water at Arrowhead Springs, I
22 negotiated agreements over the years with BlueTriton regarding its obligations to
23 deliver water to the Nation.

24 5. When the USFS denied BlueTriton's renewal of its special use permit
25 on July 26, 2024 (Notice of Denial) (ECF No. 65-13), directing that all water
26 deliveries cease within seven days (including to the Nation), we immediately took
27 steps to protect the Nation's ability to continue to receive water through
28 BlueTriton's infrastructure. Through the Nation's efforts, the USFS's Notice of

1 Denial was thereafter modified twice, allowing BlueTriton to continue to deliver
2 water to the Nation until January 15, 2025 (January 15, 2025 Cut Off).

3 6. Throughout this period, and still today, I and others representing the
4 Nation have worked, and continue to work, to ensure Arrowhead Springs has access
5 to water. Specifically, I and other Nation representatives have met with
6 representatives of the USFS, the San Bernardino Valley Municipal Water District
7 (Valley District), the San Bernardino Municipal Water District (Municipal District),
8 and others, exploring various options that would allow for the continued delivery of
9 water to Arrowhead Springs beyond January 15, 2025. These efforts have included:
10 (a) obtaining a special use permit from the USFS for the Nation to continue to get
11 water through the BlueTriton infrastructure within the SBNF; (b) the Nation and
12 USFS entering a co-stewardship agreement to study and, if needed, restore and
13 enhance the health of Strawberry Creek and to manage the delivery of water to the
14 Nation; (c) finding alternative water sources, including a permanent connection for
15 potable water from the Municipal District and a temporary connection of non-
16 potable water from the Valley District; (d) exploring federal legislation that would
17 allow for the continued delivery of water through BlueTriton infrastructure until an
18 alternative source can be procured; and (e) continuing to seek an extension of the
19 January 15, 2025 Cut Off deadline from the USFS. The Nation has deployed
20 significant resources, including leadership and staff time and hiring consultants,
21 working to resolve the problem created by the USFS's Notice of Denial.

22 7. I am aware that the USFS has argued in the pending case that the
23 Nation rejected the option of pursuing its own special use permit to allow for
24 continued water delivery through BlueTriton infrastructure. This is not accurate.
25 We have been working to develop the documentation needed for such an application
26 since we were first informed by USFS officials that it was an option (albeit one that
27 the USFS said could not be timely completed, i.e., by January 15, 2025). Because
28 of the long permitting timeframe USFS officials indicated it would take to get such

1 permit, I and others researched and attempted to find agency and legislative support
2 for ways to expedite the special use permit, including National Environmental
3 Policy Act (NEPA) categorical exclusions that could apply and potential legislative
4 solutions.

5 8. Specifically, USFS officials told us at an August 21, 2024 meeting that
6 the application process for a special use permit could take two to three years
7 (primarily because of the requirements of NEPA), and thus, longer than January 15,
8 2025. Front Country District Ranger Michael Nobles also told us at this August
9 2024 meeting, and in subsequent meetings, that the USFS needed to better
10 understand the Nation's need for the water, including the uses and amounts, as well
11 as the Nation's water rights in order to approve the Nation's special use permit, or to
12 grant any other relief. To that end, the Nation hired consultants and outside water
13 law counsel and produced a 49-page letter and attachments dated November 15,
14 2024, that provided all the information the USFS requested. *See* ECF No. 65-5. In
15 subsequent meetings, USFS officials told us they had no further questions and
16 needed no more information from the Nation regarding the topics covered in the
17 November 15, 2024 letter.

18 9. I am aware that in mid-November 2024 a Yuhaaviatam Tribal Council
19 member, the Nation's Chief Intergovernmental Affairs Officer, and its lobbyist met
20 with the officials from the U.S. Department of Agriculture (USDA) (the USFS's
21 parent agency), and those officials encouraged the Nation to pursue the special use
22 permit as the shortest path to keeping the water flowing for Arrowhead Springs. I
23 understand the USDA officials saw the special use permit as something that could
24 be approved relatively quickly, and that it would not take two to three years (as
25 USFS officials had asserted), given that the Nation is already using the water and
26 there would be no change in use. At the same time, we were informed for the first
27 time by the USDA that we would need a lease agreement with BlueTriton, such that
28 the Nation would have control over the infrastructure. Because we were informed

1 that a lease agreement would be required for a special use permit, I was directed by
2 the Nation to negotiate a lease of the infrastructure with BlueTriton, and I
3 immediately reached out to BlueTriton regarding obtaining such a lease. After
4 discussions, BlueTriton agreed to consider a potential lease of its infrastructure to
5 the Nation, subject to the parties reaching agreed upon terms. The parties are
6 currently negotiating such terms.

7 10. The USFS and the Nation entered into an Agreement to Initiate a Land
8 Exchange in April of 2022 by which the Nation would exchange land identified by
9 the USFS as supporting its mission for the SBNF for land owned by the USFS that
10 lies between the San Manuel Reservation and Arrowhead Springs and above
11 Arrowhead Springs (San Manuel Ancestral Land Exchange).¹ I serve as a primary
12 staff representative for the Nation to the USFS on the San Manuel Ancestral Land
13 Exchange. In addition to meetings between the USFS and the Nation's staff of
14 which I participated in, the Nation and USFS representatives scheduled a meeting
15 with Tribal and USFS leadership and staff for January 31, 2024, to find ways to
16 expedite the Land Exchange. The meeting was held on the Reservation and the
17 Nation's Chairwoman and members of Tribal Council, the Forest Supervisor
18 Danelle Harrison, USFS Tribal Relations Program Manager Spencer McCloud,
19 Chief of Intergovernmental Affairs Daniel Little, Director of Intergovernmental
20 Affairs Eric Ustation, the Nation's lobbyist Allison Binney, and I, among others,
21 attended in person. After the meeting with Tribal leadership, Ms. Binney,
22 Mr. Ustation, and Mr. Little accompanied the USFS's representatives on a tour of
23 the Reservation. We discussed having a follow-up meeting at Arrowhead Springs
24 and a Land Exchange follow up meeting with staff and USFS leadership was
25 scheduled for March 26, 2024.

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28 ¹ More information about the San Manuel Ancestral Land Exchange can be found at
<https://www.fs.usda.gov/project/?project=63386>.

1 11. I attended the March 26, 2024 Land Exchange follow up meeting. The
2 purpose of the meeting was to further discuss expediting the Land Exchange.
3 Indeed, this is evident from the coordinating of and setting of the Agenda. On
4 March 22, 2024, I received an email from Eric Ustation to USFS Tribal Relations
5 Program Manager Spencer McCloud outlining topics for the March 26, 2024 Land
6 Exchange follow up meeting, a true and correct copy of which is attached hereto as
7 **Exhibit 25**. At the March 26, 2024 meeting, an Agenda was distributed to USFS
8 and Nation representatives, a true and correct copy of which is attached hereto as
9 **Exhibit 26**. Forest Supervisor Danelle Harrison received a copy of the Agenda at
10 the March 26, 2024 meeting. As can be seen from the March 22, 2024 email and the
11 Agenda, the March 26, 2024 Land Exchange follow up meeting was not intended to
12 be and could not, as the Nation's leadership was not in attendance, be a government-
13 to-government consultation regarding BlueTriton's special use permit or the impact
14 of a denial of the permit. The denial had not happened, and the Nation was unaware
15 that it would occur.

16 12. I have been in every meeting between the USFS and the Nation on the
17 Land Exchange and, after the Notice of Denial, the impact of such a denial on the
18 Nation. At no time prior to the Notice of Denial, did the USFS offer assistance to
19 the Nation to find an alternative water source for Arrowhead Springs. After the
20 Notice of Denial, the USFS suggested that the Nation explore potential solutions
21 with the Valley District. The Nation has been working with the Valley District on it
22 providing temporary water through above ground pipes and a conceptual temporary
23 solution has been presented by the Valley District. However, this solution will need
24 to be designed, approved by the Valley District, rights to cross land owned by the
25 County obtained, specific pipeline, and other materials ordered and constructed, all
26 of which cannot be done prior to the January 15, 2025 Cut Off.

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1 I declare under penalty of perjury under the laws of the United States that the
2 foregoing is true and correct.

3 Executed this 11th day of January 2025, at San Marino, California.

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6 JOANNE MICHELLE HICKEY -
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